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September 16, 2004

VIA HAND DELIVERY

RECEIVED

SEP 16 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
236 Massachusetts Avenue, NE, Suite 110
Washington, D.C. 20002

Federal Communications Commission
Office of Secretary

Re: In the Matter of a Request for Review By Advanced TelCom Inc. (Filer ID #817168), f/k/a Advanced TelCom Group, Inc. and Shared Communications Services (Filer Id #802188) of Decision of Universal Service Administrator CC Docket Nos. 96-45 and 97-21

Dear Ms. Dortch:

Enclosed for filing in the above-referenced proceeding are an original and four (4) copies of the Appeal of Advanced TelCom Inc. f/k/a Advanced TelCom Group, Inc. and Shared Communications Services of the Universal Service Administrative Company's Decision Denying Contributor Appeal.

Please date stamp the enclosed duplicate and return it to the courier. If you have any questions, do feel free to contact me at (202) 955-9765.

Sincerely,



Brad E. Mutschelknaus
Erin R. Swansiger

Enclosures

cc: Cathy Carpino, Deputy Chief, Telecommunications Access Policy Division, FCC
James W. Shook, Enforcement Bureau, FCC
Jeffrey A. Mitchell, Associate General Counsel, USAC
Victor A. Allums, General Counsel, GE Business Productivity Solutions, Inc.
Meredith H. Gifford, Assistant Vice President, Regulatory Affairs, GE Business Productivity Solutions, Inc.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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SEP 16 2004

Federal Communications Commission
Office of Secretary

In the Matter of a Request for Review)	
By Advanced TelCom Inc. f/k/a Advanced)	CC Docket No. 96-45
TelCom Group, Inc. and)	
Shared Communications Services of)	CC Docket No. 97-21
Decision of Universal Service Administrator)	

**APPEAL OF THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY'S
DECISION DENYING CONTRIBUTOR APPEAL**

Pursuant to Sections 54.719(c), 54.721 and 54.722 of the rules of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 54.719(c), 54.721 and 54.722, and the July 19, 2004 *Administrator's Decision on Contributor Appeal*,¹ Advanced TelCom Inc. f/k/a Advanced TelCom Group, Inc. ("ATI"), and Shared Communications Services, Inc. ("SCS") (ATI and SCS combined are referred to as "ATG"), both wholly-owned subsidiaries of Advanced TelCom Group, Inc, hereby respectfully request that the Commission reverse the decision of the Universal Service Administrative Company ("USAC") denying ATG's request that USAC cease collection of amounts attributable to services provided and billed by ATG prior to its bankruptcy petition filing on May 2, 2002 ("Pre-Petition Revenue"). This is a timely filed appeal of the *Administrator's Decision on Contributor Appeal*, in full compliance with Section 54.720(d) of the Commission's rules.²

¹ *In re Appeal of Advanced TelCom, Inc. f/k/a Advanced TelCom Group, Inc. and Shared Communications Services, Inc., Administrator's Decision on Contributor Appeal* (July 19, 2004), ("Administrator Appeal Decision"), appended hereto as **Attachment A**.

² 47 C.F.R. § 54.720(d).

Specifically, ATG requests that the Commission direct USAC immediately to discontinue collection of pre-petition contribution amounts attributable to ATG, and to amend the statements of account for Filer 499 IDs 817168 and 802188 to remove all assessments based upon revenues reported by ATG for services provided and billed prior to May 2, 2002, the date of ATG's bankruptcy petition (the "Petition Date"). ATG further requests that the Commission clarify that Section 254(d) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("the Act"), and Section 54.706(a) of its interpretive regulations require that providers of interstate telecommunications service contribute to the Federal Universal Service Fund ("FUSF") *at such time as they provide and bill for such service*. Finally, ATG requests that the Commission direct USAC to refrain from sending the Company future invoices based on the Pre-Petition Revenues reported in its April 2003 FCC Form 499A filings, specifically, for the time period from January 1, 2002-May 1, 2002.

STATEMENT OF INTEREST

ATG's interest in the matter presented for review is direct and profound. ATG is a contributor to the FUSF and received, after May 2, 2002, certain invoices from USAC that unlawfully sought to recover pre-bankruptcy petition charges that have been expunged by a lawful and executory order of a U.S. Bankruptcy Court. ATG's interest is in having the Commission resolve a matter in which USAC has adopted a policy absent legal basis and one that has exceeded the bounds of its delegated authority.

It is ATG's position that where adjustments made by USAC after the Petition Date are based upon *revenues based on services provided and billed prior to the filing of the bankruptcy petition*, such revenues are properly categorized as pre-petition debt, for which ATG's obligations have been relieved by the Order ("Confirmation Order") Confirming the First

Amended Joint Plan of Reorganization (“Reorganization Plan”).³ Stated another way, any universal service assessments upon ATG that are based upon services provided and billed by ATG prior to the Petition Date, are pre-petition obligations for which ATG is not liable under the terms of the Reorganization Plan, Confirmation Order and applicable bankruptcy law. As discussed in the Company’s appeal to USAC of the invoices assessed on Pre-Petition Revenue (“USAC Appeal”)⁴ and explained herein, because USAC is limited to the distribution provided to Class 4 claimants in the Plan (as that term is defined in the Confirmation Order), USAC is prohibited by the terms of the Confirmation Order from recovering pre-petition obligations from ATG, and *is permanently enjoined from pursuing its pre-petition claims* outside of the Reorganization Plan.

Given USAC’s rejection of ATG’s appeal of USAC’s unlawful attempt to collect contributions based on Pre-Petition Revenues, ATG hereby asks the Commission to: (1) acknowledge that a telecommunications provider’s obligation to contribute to the FUSF arises at such time as it provides interstate telecommunications services and bills for such services; and (2) determine that FUSF assessments based upon Pre-Petition Revenues received by ATG constitutes pre-petition debt, for which ATG’s liability to USAC has been expunged by the Confirmation Order.

STATEMENT OF FACTS

BACKGROUND -- BANKRUPTCY PROCEEDINGS

On May 2, 2002 (the “Petition Date”), Advanced TelCom Group, Inc. and its subsidiaries, ATI and SCS, each filed voluntary petitions under Chapter 11 of Title 11 of the

³ See *Appeal of Advanced TelCom, Inc. f/k/a Advanced TelCom Group, Inc. and Shared Communications Services, Inc. of invoices dated 7/22/03 and 8/22/03* (filed Sept. 22, 2003) (“USAC Appeal”), Exhibit C (appended hereto as **Attachment B**).

⁴ *Id.*

United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Northern District of California, Santa Rosa Division (the “Bankruptcy Court”).⁵ On February 26, 2003, Advanced TelCom Group, Inc. and its subsidiaries, ATI and SCS, filed a Reorganization Plan for Bankruptcy Court approval. The Bankruptcy Court issued a Confirmation Order, on May 13, 2003 which limits USAC to the distribution provided to Class 4 claimants (*i.e.*, unsecured creditors) in the Reorganization Plan.⁶ In other words, pursuant to the Reorganization Plan, USAC had a general unsecured claim, which the Debtors (as that term is defined in the Confirmation Order to include Advanced TelCom Group, Inc., Advanced TelCom, Inc. and Shared Communications Services, Inc.) classified as a Class 4 claim.

Section 6.5 of the Reorganization Plan provides that “[e]ach holder of an Allowed Unsecured Claim will receive its Pro Rata share of the Unsecured Distribution Reserve and its Adjusted Pro Rata share of the proceeds of any Avoidance Action.”⁷ The Confirmation Order, which was approved on May 13, 2003, provides:

Except as otherwise provided in the Plan or this Confirmation Order, on and after the Effective Date, all Persons who have held, currently hold or may hold a Claim or Interest . . . treated or provided for pursuant to the Plan are permanently enjoined from taking any of the following actions on account of such Claim or Interest: (i) commencing or continuing, in any manner and in any place, any action or proceeding against the estate, the Debtors, the Reorganized Debtors, the Liquidation Trustee, Professional Persons or the Committee without leave of the Bankruptcy Court, (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree or other order against the estate, the Debtors, the Reorganized Debtors, the Liquidation Trustee, or the Committee without leave of the Bankruptcy Court; (iii) creating, perfecting or enforcing any lien against property of the Estate

⁵ *Id.* at 2.

⁶ *Supra* n.3.

⁷ ATG does not concede that the USAC has or ever had an Allowed Unsecured Claim.

without leave of the Bankruptcy Court; (iv) taking any action to obtain possession of property of the Estate or to obtain possession of property from the estate or to exercise control over the Estate or property of the Estate without leave of the Bankruptcy Court; and (v) commencing or continuing any action or proceeding, in any manner and in any place, that does not comply with or is inconsistent with the provisions of the Plan.⁸

Thus, pursuant to the terms of the Reorganization Plan and Confirmation Order, the rights of all unsecured creditors – including USAC – were strictly limited to their pro rata share of the Unsecured Distribution Reserve, and they were permanently barred from attempting to collect additional amounts. Despite that clear legal requirement, USAC has continued its unlawful attempts to collect additional FUSF amounts that are properly regarded as pre-petition debt.

USAC PROCEEDINGS

On April 1, 2003, ATI and SCS each filed two separate FCC Forms 499A – a total of four filings -- one form containing revenue for the pre-petition period for each company (*i.e.* January 1-May 1, 2002), and one form containing revenue for the post-petition period for each company (*i.e.* May 2-December 31, 2002).⁹ On July 22, 2003 and August 22, 2003, USAC billed ATG for amounts that included adjustments made as a result of the April 2003 FCC Form 499A filings. The adjustments made in the July 22 and August 22, 2003 invoices impermissibly included universal service contributions based on Pre-Petition Revenues. The Reorganization Plan and Confirmation Order preclude USAC's recovery of such pre-petition obligations. As a result, USAC is enjoined from collecting, or attempting to collect, such contributions from ATG, outside of the explicit terms of the Reorganization Plan.

⁸ See *USAC Appeal, Exhibit C* ¶ 12.

⁹ *Id.*

On August 11, 2003, ATG properly remitted to USAC amounts due pursuant to the July 22, 2003 invoices for telecommunications services provided and billed in the post-bankruptcy filing period (*i.e.* post-May 1, 2002). At that time, in an explanatory cover letter to USAC, ATG fully explained that it was remitting the amounts attributable to post-bankruptcy petition obligations only.¹⁰ Likewise, on September 15, 2003, ATG remitted amounts billed under the August 22, 2003 invoices which were attributable to telecommunications services provided and billed by ATG during the post-bankruptcy filing period. However, USAC thereafter unlawfully continued to invoice ATG on the basis of revenues for telecommunications services provided and billed during the pre-petition period of January 1-May 1, 2002.

Confronted with USAC's persistent effort to collect expunged pre-petition charges from ATG, on September 22, 2003, the Company filed its *USAC Appeal* in which ATG requested that USAC immediately discontinue its efforts to collect required FUSF contribution amounts based on Pre-Petition Revenues and amend the statements of account for Filer 499 IDs 817168 and 802188 to remove all assessments attributable to services provided and billed by ATG prior to the Petition Date.¹¹ In its appeal, ATG further requested that USAC cease sending invoices based on the Pre-Petition Revenues reported in the Company's April 2003 FCC Form 499A filings (specifically, for the time period from January 1–May 1, 2002, as clearly identified in the pre-petition versions of the April 2003 FCC Form 499A filings).¹²

On July 19, 2004, USAC denied the Company's appeal,¹³ which has compelled ATG to hereby seek FCC review of USAC's unlawful behavior.

¹⁰ *Id.* at 2-3.

¹¹ *Id.* at 5.

¹² *Id.*

¹³ *Administrator Appeal Decision, supra* n.1.

QUESTIONS PRESENTED FOR REVIEW

When does the obligation to contribute to the FUSF arise for a provider of interstate telecommunications services?

The relevant statutory provision governing this issue is 47 U.S.C. § 254(d), which states:

Every telecommunications carrier that *provides* interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable and sufficient mechanisms established by the Commission to preserve and advance universal service.¹⁴

The relevant regulation governing this issue is 47 C.F.R. § 54.706, which specifies:

Entities that *provide* interstate telecommunications to the public or to such classes of users as to be effectively available to the public, for a fee . . . must contribute to the universal service support programs.¹⁵

ARGUMENT

A. FUSF CONTRIBUTION OBLIGATIONS ARISE WHEN TELECOMMUNICATIONS SERVICES ARE PROVIDED AND BILLED; ASSESSMENTS BASED UPON PRE-PETITION REVENUE CONSTITUTE PRE-PETITION DEBT UNDER APPLICABLE BANKRUPTCY LAW

The Commission's resolution of the question presented -- *When does the obligation to contribute to the FUSF arise for a provider of interstate telecommunications services?* -- is central to resolving this appeal. It is ATG's position that the language of both Section 254(d) of the Communications Act of 1934 as amended by the Telecommunications Act

¹⁴ 47 U.S.C. § 254(d) (emphasis added).

¹⁵ 47 C.F.R. § 54.706 (emphasis added).

of 1996 (“Act”) and Section 54.706 of the Commission’s rules require telecommunications service providers to contribute to FUSF when they actually provide telecommunications services and bill their end users for such services. By contrast, USAC contends that the obligation to pay FUSF does not arise until much later, when USAC ultimately renders an invoice to a carrier.

The critical issue of when a telecommunications service provider’s obligation to contribute to the FUSF arises is not an accounting question; rather, it is a legal obligation imposed on providers of interstate telecommunications service *by statute and by regulation*. By statute, and for the relevant time period in 2002, providers of interstate telecommunications services must contribute to the FUSF based upon each dollar of billed revenue.¹⁶ The invoices that a provider receives from USAC are merely the final administrative acknowledgement of the FUSF amount due as a result of the previously provided services. Stated another way, the invoices generated by USAC are a way of facilitating the collection of mandatory contributions to the FUSF – nothing less, nothing more. The *obligation to pay*, by statute, is independent of the collection methodology and is premised upon the *provision* of interstate telecommunications services to end user customers and the resulting billing for such services. Therefore, pursuant to Section 54.706 of the Commission’s rules, and Section 254(d) of the Act, ATG’s obligation to contribute to the FUSF clearly arose at the time that it provided and billed its customers for telecommunications services, thus generating revenue upon which its FUSF obligations could be calculated.

ATG filed for bankruptcy on May 2, 2002. The Company filed FCC Forms

¹⁶ We note that since April 1, 2003, contributors to the FUSF have been billed by USAC in the same month in which such entities generate the revenues that they previously have projected in their universal service filings. As a result, an issue such as this is unlikely to arise again under the present system. Should the Commission ultimately adopt a non-revenue based system of contribution that would assess contributors based on their provision of connectivity to interstate networks, the obligation to contribute to the FUSF likewise will attach at such time as providers generate and collect revenues based on placing lines or numbers into service for their end user customers.

499A which reported separately for the pre-petition (*i.e.* January 1-May 1, 2002) and post-petition periods. As of the date of its bankruptcy filing, ATG had not been invoiced on the basis of the services provided and billed during the relevant pre-petition time period of January 1-May 1, 2002, and thus had not contributed to the FUSF based on any such invoices. Given the bankruptcy filing on May 2, 2002, all services provided and billed by the Company during the period between January 1-May 1, 2002 constitute Pre-Petition Revenue, and the associated FUSF liability constitutes pre-petition debt, the collection of which clearly is governed by the terms of the Confirmation Order issued by the Bankruptcy Court.

B. USAC’S POSITION THAT THE OBLIGATION TO CONTRIBUTE TO THE FUSF ARISES AT THE TIME USAC CALCULATES CONTRIBUTORS’ INVOICES IS BASELESS POLICY-MAKING THAT IMPERMISSIBLY EXCEEDS ITS DELEGATED AUTHORITY

USAC’s position, as stated in its denial of the ATG appeal, is that FUSF funding obligations arise only when USAC calculates the amounts to be invoiced to contributors.¹⁷ Specifically, USAC contends that a provider’s obligation to contribute to FUSF is a monthly obligation “arising on the date that USAC calculates this obligation.”¹⁸ In the *Administrator’s Appeal Decision*, USAC states that the act of USAC’s own billing monthly assessments triggers the obligation to contribute to the FUSF.¹⁹ As a result, USAC argues that the adjustments to ATG’s accounts, as reflected in invoices sent *after* the Petition Date, constitute post-petition debt of the Company.²⁰

¹⁷ See *Administrator Appeal Decision* at 2.

¹⁸ *Id.* at 2.

¹⁹ *Id.* at 4 (stating that “[t]he 2003 A/Q True-up reconciled reported 2002 quarterly revenue that itself resulted in FUSF obligations *billed* between July 2002 and March 2003. Because this period of time is undisputedly after ATG’s filing for bankruptcy in May 2002, the Adjustments associated with this True-up were properly considered by USAC as post-petition obligations of ATG.”)

²⁰ *Id.* at 2.

USAC's obviously self-serving position simply lacks any legal basis. No statute, regulation, or Commission order has established that FUSF contribution obligations arise at the time that USAC *calculates* the amount of such contributions for invoicing purposes. USAC's self-created policy is without statutory or regulatory foundation and is plainly insufficient as a matter of law. Moreover, USAC's adoption of this policy exceeds the bounds of its express authority, as discussed in detail below.

1. USAC HAS IMPERMISSIBLY CREATED POLICY FOR WHICH IT HAS NO LAWFUL AUTHORITY

USAC has no statutory basis for its interpretation – in fact, it cites to no statute, Commission rule, policy or order in its denial of ATG's appeal.²¹ Finding no legal authority supportive of its position, USAC has chosen to create its own policy by concluding that obligations to contribute to the FUSF arise when USAC calculates the amount of contribution to be invoiced. However, USAC's enabling statutes do not permit it to make such policy formulations. USAC's role is strictly confined to program administration of the FUSF. The FCC and the Federal-State Joint Board retain full authority and control over the FUSF programs, and are the exclusive entities authorized to establish FUSF-related policy.²²

The limited responsibilities delegated to USAC are patently clear in the rules and regulations setting forth the scope of USAC's charter. Sections 54.702(a) and (b) of the Commission's rules specify that USAC is responsible for administering the FUSF programs,

²¹ *Id.*

²² See *In the Matter of Federal State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9192 ¶¶ 813-815 (1997) ("1997 Joint Board Order"); *In the Matter of Federal State Joint Board on Universal Service*, Report and Order, 13 FCC Rcd 25058 ¶¶ 69, 72 (1998) (stating that "We find that the Commission has the authority to review USAC decisions . . . because USAC is administering the universal service support mechanisms for the Commission, subject to Commission rules and oversight."); see also 47 U.S.C. § 254, *et seq.*

including billing, collection and disbursement of FUSF funds.²³ These regulations do not provide USAC with the discretion to create new policy governing universal service contributions, as it has done in the instant case. Indeed, in addressing early concerns expressed over the role of USAC, the Commission has emphasized that USAC's functions are to be “exclusively administrative,”²⁴ noting that Section 54.702(c) expressly limits USAC’s authority by stating that USAC “may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission’s rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.”²⁵ Despite the fact that the FCC’s regulations clearly prohibit USAC from establishing policy or addressing, on its own, uncertainties with respect to the critical issue of when a carrier’s obligation to contribute to the FUSF arises, it clearly has done so in this case. Accordingly, the FCC now must step in to correct USAC's self indulgent error.

2. USAC HAS NO LEGAL BASIS FOR ITS SELF-CREATED POLICY

USAC’s stated policy has no basis in law. Neither the relevant statute – Section 254(d) of the Act – or the FCC's rules suggest that an entity’s federal universal service contribution obligation is triggered when USAC issues its invoices. Indeed, the plain meaning of the governing statute and rules suggest that USAC's position is utterly without legal foundation. Both the language of Section 254 of the Act and of Section 54.706 of the Commission’s rules governing “Contributions” require only that “[e]ntities that *provide* interstate

²³ 47 U.S.C. §§ 54.702(a)-(b).

²⁴ 1998 Joint Board Order at 25067 ¶16.

²⁵ 47 U.S.C. §§ 54.702(c).

telecommunications to the public . . . must contribute to the universal service support mechanisms.” Thus, absent anything more, the plain meaning of the language of both the statute and the rule is that carriers become obligated to contribute to the FUSF at the time that such entities “provide” interstate telecommunications services to their customers.

Neither the rule nor the statute specify or anywhere indicate, as USAC suggests, that the obligation for “[e]ntities that provide interstate telecommunications to the public . . . [to] contribute to the universal service support mechanisms. . . *arises at such time as the invoices from USAC are calculated*” or “*at such time as the carrier is invoiced by USAC.*” Acceptance of USAC's position would lead to the incongruous result that carriers that discontinue providing telecommunications services are instantly absolved from payment of FUSF attributable to all prior services for which USAC had not yet billed them. Such a result would be inconsistent with the FCC's express universal service policies, in which the Commission has determined that all entities that terminate or originate telecommunications traffic over the domestic PSTN should be required to contribute equally to the FUSF.²⁶ Moreover, such a result would serve to *diminish* universal service funding – which could hardly be the intent of Congress in promulgating the FUSF contribution statute.

C. PRIOR FCC ACTIONS INDICATE THAT FUSF LIABILITY ARISES AT THE TIME END USERS PAY CARRIERS FOR TELECOMMUNICATIONS SERVICES

Prior FCC actions are consistent with ATG's position that the obligation to contribute to the FUSF arises at the time that telecommunications services are provided and associated end user revenues are received. In 1997, the Commission set for public notice²⁷ the

²⁶ *In re Federal-State Board on Universal Service, Report and Order*, CC Docket No. 96-45, 12 FCC Rcd 8776 ¶ 779 (1997) (“Universal Service Order”).

²⁷ *Pleading Cycle Established for Comments on Petitions for Preemption and Declaratory Ruling Regarding the Puerto Rico Telecommunications Act of 1996*, Public Notice, 11 FCC Rcd 14989, CCBPol 96-24 (rel.

Puerto Rican Telecommunications Act of 1996 (the "PR Telecom Act"), which is based on the federal Telecommunications Act of 1996 ("Act") and which provides, in relevant part:

*The obligation to contribute to the Universal Service Fund shall begin on the date the telecommunications company begins to render telecommunications services in Puerto Rico and to generate income from such services, pursuant to Section 254(f) of the Federal Communications Act.*²⁸

The Commission sought public comment on several requests that it preempt portions of the PR Telecom Act that the petitioners' believed were inconsistent with the federal Act.²⁹

Section 254(f) of the Act requires "States" (which include territories such as Puerto Rico, *see* 47 U.S.C. §153(4)) to adopt regulations *not inconsistent with* the Commission's rules to preserve and advance universal service.³⁰ If a State is prohibited by federal statute from adopting universal service regulations that are inconsistent with the Commission's rules, it logically follows that Puerto Rico may not adopt universal service regulations inconsistent with the Commission's federal universal service rules. As set forth above, Chapter III, Section 6(c)(5) of the PR Telecom Act specifically references its compliance with the requirements of Section 254(f) of the Act.

As set forth above, the PR Telecom Act explicitly provides that "the obligation to contribute to the Universal Service Fund *shall begin on the date the telecommunications*

Nov. 25, 1996) ("PRTA Public Notice")

²⁸ 27 L.P.R.A. § 265 Chap. 5 § 6(C)(5) (app'd Sept. 12, 1996) (emphasis added).

²⁹ *PRTA Public Notice; see also Petition for Declaratory Ruling Regarding Preemption of the Puerto Rico Telecommunications Act of 1996*, Order, 13 FCC Rcd 5293, CCBPol 96-24 (rel. Mar. 19, 1998) ("PRTA Order"). Ultimately, the parties who had petitioned the Commission voluntarily withdrew their petitions, which appear to have related to interconnection issues. Thus, the Commission never rendered an order addressing the merits of the issues in this proceeding.).

³⁰ 47 U.S.C. § 254(f).

company begins to render telecommunications services in Puerto Rico and to generate income from such services, pursuant to Section 254(f) of the Federal Communications Act” (emphasis added). Given the requirements of Section 254(f), this provision must be consistent with the Commission’s rules; otherwise, as matter of law, it cannot exist. There can be no doubt that the Commission was well aware of the provisions in the PR Telecom Act – indeed, it set this very statute for public notice and comment nearly eight years ago. Yet the Commission has not set aside or criticized in any way the PR Telecom Act’s express requirement that FUSF funding obligations arise at the time that services are provided by the carrier. This PR Telecom Act requirement, and the Commission’s tacit acceptance of it, is consistent with the position of ATG in the instant case, and contravenes USAC’s interpretation of Section 254 and of the FCC’s rules.

D. ATG’S STATUTORY INTERPRETATION IS CONSISTENT WITH CONGRESSIONAL FUSF POLICY

As a matter of policy, ATG’s interpretation of Section 54.706 of the Commission’s rules and Section 254(d) of the Act is the reading that is most consistent with Congressional intent. There can be no doubt that Congress intended that carriers be required to contribute to FUSF whenever they use the PSTN to provide telecommunications services to end users. Acceptance of the Company’s position ensures this result because under this approach, whenever FUSF-assessable services are provided, a corresponding obligation to contribute to FUSF arises. By contrast, the position advocated by USAC would create numerous funding gaps.

One obvious example – that acceptance of USAC’s position would absolve carriers that discontinue service from paying FUSF attributable to all prior services for which it had not been billed by USAC -- was discussed above. As another example, we note that, in

1997, the FCC permitted USAC to amend its authorization to collect FUSF contributions from a quarterly to a monthly installment basis.³¹ This modification effectively changed the due date for the first payments to the FUSF from January 1998 to February 1998. USAC's position would lead to the absurd result that providers who had generated interstate end user telecommunications revenues in 1997 did not owe an obligation to the FUSF as of January 1998 simply because they had not yet received an invoice from USAC.

In sum, Section 254(d) of the Act and relevant FCC interpretive regulations provide that the obligation for ATG to contribute to the FUSF arose *at the time that the Company provided telecommunications services to end users and billed for those services*. As a result, any FUSF funding obligation attributable to services provided and billed during this time period constitutes a pre-petition debt. Accordingly, any required FUSF contributions based on services provided by ATG prior to the Petition Date that had not been paid by the Petition Date, constitute pre-petition obligations, subject only to the terms of the Confirmation Order of the Bankruptcy Court.

STATEMENT OF RELIEF

Pursuant to Sections 54.719(c), 54.721 and 54.722 of the rules of the FCC, ATG respectfully requests that the Commission direct USAC immediately to discontinue its unlawful attempts to collect from ATG contributions based on Pre-Petition Revenues and to amend the statements of account for Filer 499 IDs 817168 and 802188 to remove all assessments calculated based on Pre-Petition Revenues. ATG further requests that the Commission direct USAC to

³¹ *In re Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal State Board on Universal Service*, Second Order on Reconsideration in CC Docket No. 97-21, FCC 97-400 at 2-3 (rel. Nov. 26, 1997).

refrain from sending it any future invoices based on the pre-petition revenues reported in ATG's April 2003 FCC Form 499A filings.

Respectfully submitted,



KELLEY DRYE & WARREN LLP

Brad E. Mutschelknaus

Erin R. Swansiger

Counsel to Advanced TelCom Inc. f/k/a
Advanced TelCom Group, Inc. and Shared
Communications Services, Inc.

Dated: September 16, 2004

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

State of California)
)
County of Sonoma) ss.

DECLARATION

My full name is Eric Russell and I am over the age of eighteen years old. I am currently the Vice President, Finance and Accounting for Advanced TelCom, Inc. f/k/a Advanced TelCom Group, Inc. ("ATI") and Shared Communications Services, Inc. ("SCS"). ATI is a corporation organized and existing under the laws of the State of Delaware, with its office located at: 3723 Fairview Industrial Drive, Salem, OR 97302. SCS is a corporation organized and existing under the laws of the State of Oregon, with its office located at: 3723 Fairview Industrial Drive, Salem, OR 97302. I make this Declaration on behalf of ATI and SCS.

I provide this Declaration in compliance with the requirements of Section 1.16 of the rules of the Federal Communications Commission (the "Commission"), 47 C.F.R. § 1.16.

Under penalty of perjury, I hereby declare that the following is true and correct to the best of my knowledge and belief:

1. I have reviewed the *Administrator's Decision on Contributor Appeal* issued by the Universal Service Administrative Company ("USAC") to outside counsel for ATI and SCS (ATI and SCS will be referred to collectively hereinafter as "Reorganized ATG"), dated July 19, 2004. I have reviewed the foregoing *Appeal of the Universal Service Administrative Company's Decision Denying Contributor Appeal* ("Appeal"), prepared by Reorganized ATG and its counsel.
2. In preparation of this Appeal, Reorganized ATG, through its employees and attorneys, compiled information and documentation responsive to the requirements of Section 54.721 of the Commission's general filing rules governing requests for review of USAC decisions, and to the appeal requirements set forth in the *Administrator's Decision on Contributor Appeal*.
3. Furthermore, the documents and information submitted with this Appeal are true and correct to the best of my knowledge and belief.

IN WITNESS WHEREOF, the above-mentioned corporations have caused this instrument to be executed in their behalf, by Eric Russell, their Vice President, Finance and Accounting.

Advanced TelCom, Inc., f/k/a Advanced TelCom Group, Inc. and
Shared Communications Services, Inc.

By:


Eric Russell

ATTACHMENT A



Universal Service Administrative Company

Administrator's Decision on Contributor Appeal

July 19, 2004

VIA ELECTRONIC & REGISTERED MAIL

Brad E. Mutschelknaus, Esq.
Erin R. Swansiger, Esq.
Kelley Drye & Warren, LLP
1200 19th Street, N.W.
Washington, DC 20036

Re: Appeal of Advanced TelCom, Inc. (Filer # 817168) f/k/a Advanced TelCom Group, Inc. and Shared Communications Services, Inc. (Filer # 802188)

By your letter of September 22, 2003, on behalf of Advanced TelCom, Inc. and Shared Communications Services, Inc., subsidiaries of Advanced TelCom Group, Inc. (ATG), you requested review of a decision of the Universal Service Administrative Company (USAC) in accordance with 47 C.F.R. Section 54.719(b) (Request or Appeal).¹ For the reasons set forth in detail below, USAC affirms its decision and denies your appeal.

Background

On May 2, 2002, ATG filed voluntary petitions for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code.² In its Appeal, ATG challenges USAC's decision to treat Federal Universal Service Fund (USF) charges appearing on ATG's July 2003 and August 2003 invoices as post-petition obligations of ATG. The July 2003 and August 2003 charges at issue are adjustments associated with the 2003 A/Q True-up which reconciled ATG's reported quarterly and annual 2002 revenue (Adjustments). ATG argues that, because the Adjustments resulted from a reconciliation that included pre-petition revenues, the associated obligations are pre-petition obligations and hence must be included in USAC's pre-petition bankruptcy claim.

¹ Because the issues subject to review in this Appeal are identical with respect to each filer, for convenience we collectively refer to the appealing entities as ATG.

² 11 U.S.C. §§ 101 *et seq.*

Summary of Decision

USF obligations arise when they are calculated, not, as ATG asserts, when the revenue on which they are based is earned. ATG is correct that when an A/Q True-up results in adjustments associated with pre-petition obligations, those adjustments are also pre-petition obligations. In ATG's case, however, the Adjustments at issue relate solely to post-petition obligations. For this reason, USAC properly invoiced ATG for the adjustments in the post-petition period.

Legal Framework

A contributor's obligation to contribute to the USF is a monthly obligation arising on the date that USAC calculates this obligation, usually the fifteenth of the month. The amount of the obligation is determined by a calculation methodology established and modified from time to time by the Federal Communications Commission (FCC).³ The methodology in effect during 2002, the period at issue in this Appeal, required contributors to report historical gross-billed end-user telecommunications revenue on a quarterly basis.⁴ USAC used these quarterly filings to calculate contributors' monthly obligations for the upcoming quarter, resulting in a six month interval between the accrual of revenues by contributors and their use in calculating monthly charges. In this case, for example, in February 2002, ATG was required to file FCC Form 499-Q reporting 4Q 2001 revenue (October through December 2001). USAC utilized this reported revenue to calculate the monthly charges reflected on ATG's April, May, and June 2002 invoices.

Effective in 2003, the FCC changed the contribution methodology to, among other things, eliminate the six month interval between when revenue was accrued and when USAC calculated monthly contributions based on that revenue.⁵ Thus, beginning in 2Q

³ See, e.g., *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-21, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400 (1997) (*Second Order on Reconsideration*).

⁴ See *Federal-State Joint Board on Universal Service; Petition for Reconsideration filed by AT&T*, Report and Order and Order on Reconsideration, CC Docket No. 96-45, 16 FCC Rcd 5748 (2001) (*Contribution Interval Order*).

⁵ See *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237,

2003, USAC, instead of relying upon 4Q 2002 gross billed revenue to calculate monthly USF charges for April, May, and June 2003, utilized 2Q 2003 projected collected revenue to calculate those charges. As a result of this methodology change, USAC never used reported revenue from 4Q 2002 or 1Q 2003 to calculate USF charges.

The 2003 A/Q True-up adjustments at issue in this Appeal were calculated using a transitional true-up methodology established by the FCC to address the fact that 4Q 2002 revenue was not used to calculate USF charges.⁶ Pursuant to this methodology, USAC took ATG's 2002 annual revenue (as reported on the 2003 FCC Form 499-A) and subtracted ATG's 4Q 2002 revenue (as reported on the February 2003 FCC Form 499-Q). This amount was then reconciled against the revenue reported by ATG in 1Q, 2Q, and 3Q 2002 (on respective Forms 499-Q).⁷ Because the six month lag time between accrual and calculation of charges was still present, revenue from the first three quarters of 2002 resulted in monthly USF charges from July 2002 through March 2003 (after which the new methodology was implemented). Thus adjustments resulting from the 2003 A/Q True-up were associated with USF obligations billed between July 2002 and March 2003.

Discussion:

ATG filed for Chapter 11 bankruptcy protection in May 2002. Pursuant to the contribution methodology in effect at that time, USAC calculated ATG's first post-petition monthly invoice, for May 2002, using previously reported 4Q 2001 revenue. These May 2002 charges represented a current obligation based, effectively, upon estimated 2Q 2002 revenue. Reported 4Q 2001 revenue simply provided the basis for this estimate and was not, as ATG argues, the source of the obligation to contribute. The FCC's elimination of the 6 month reporting/billing interval illustrates the point: If reported revenue were the source of the USF obligation, the FCC would have had to collect or waive six months worth of obligations in order to implement the change in

99-200, 95-116, 98-170, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) (*Interim Contribution Methodology Order*)

⁶ See *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Order and Second Order on Reconsideration, FCC 03-58 (2003) (*Second Order on Reconsideration*).

⁷ See *id.* at ¶¶ 15, 16.

contribution methodology; instead, six months of revenue were skipped over and never billed.

Using ATG's argument that USF obligations arise at the time a company earns the revenue on which the estimated charges are based, ATG apparently would claim that, because invoice charges for May 2002 were calculated with reference to reported revenue (4Q 2001) that dates from before its bankruptcy filing, these May charges must be considered to be pre-petition obligations. Because reported historical revenue is effectively a proxy for current revenue, used only as a basis for calculating current charges, ATG's argument must fail.

For the same reason, ATG's specific claim that the Adjustments from the 2003 A/Q True-up are pre-petition obligations also fails. As set forth above, the 2003 A/Q True-up reconciled reported 2002 quarterly revenue that itself resulted in USF obligations billed between July 2002 and March 2003.⁸ Because this period of time is undisputedly after ATG's filing for bankruptcy in May 2002, the Adjustments associated with this True-up were properly considered by USAC as post-petition obligations of ATG.

Conclusion:

For the reasons and bases set forth above, USAC hereby denies ATG's Appeal.

Decision on Appeal: Denied.

If you disagree with the USAC response to your Letter of Appeal, you may file an appeal with the FCC. Your appeal must be **POSTMARKED** within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via the United States Postal Service, you should direct the appeal to:

Federal Communications Commission
Office of the Secretary
445 – 12th Street, SW
Room TW-A325
Washington, DC 20554

⁸ The 2002 A/Q True-up (performed in 3Q 2002) reconciled 2001 reported revenue and covered USF charges from July 2001 through June 2002. Any adjustments or credits associated with this true-up would have been pro-ratable across ATG's pre- and post-petition periods.

Documents sent by Federal Express or any other express mail should use the following address:

Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743
(8:00 A.M. – 5:30 P.M. ET)

For hand-delivered or messenger-delivered items, use the following address:

Federal Communications Commission
Office of the Secretary
236 Massachusetts Avenue, NE, Suite 110
Washington, DC 20002
(8:00 A.M. – 7:00 P.M.)

For security purposes, hand-delivered or messenger-delivered documents will not be accepted if they are enclosed in an envelope. Any envelopes must be disposed of before entering the building. Hand deliveries must be held together with rubber bands or fasteners.

Appeals may also be submitted to the FCC electronically, either by the Electronic Comment Filing System (ECFS) or by fax. The FCC recommends filing with the ECFS to ensure timely filing. Instructions for using ECFS can be found on the ECFS page of the FCC web site. Appeals to the FCC filed by fax must be faxed to 202-418-0187. Electronic appeals will be considered filed on a business day if they are received at any time before 12:00 A.M. (midnight), Eastern Standard Time. Fax transmissions will be considered filed on a business day if the complete transmission is received at any time before 12:00 A.M.

Please be sure to refer to CC Docket No. 96-45 on all communication with the FCC. The appeal transmission must also provide your company's name and Filer ID, plus necessary contact information, including the name, address, telephone number, fax number, and e-mail address of the person filing the appeal. Unless the appeal is by ECFS, please include a copy of the letter being appealed.

Sincerely,

USAC

Universal Service Administrative Company

cc: Cathy Carpino, FCC Wireline Competition Bureau
James Shook, FCC Enforcement Bureau

ATTACHMENT B

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

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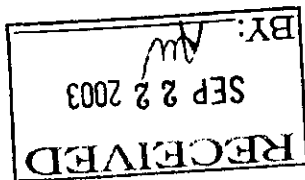
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TOKYO, JAPAN

September 22, 2003



Via Hand Delivery

Contributor Letter of Appeal

Universal Service Administrative Corporation

Board of Directors

2120 L Street, N.W.

Suite 600

Washington, D.C. 20037

Re:

Appeal of Advanced TelCom Inc. f/k/a Advanced TelCom Group,
Inc., and Shared Communications Services, Inc. of invoices dated
7/22/03 and 8/22/03
Filed 499 ID Nos. 817168 and 802188
CC Docket No. 96-45

Dear Sirs:

In July and August 2003, Advanced TelCom Inc. f/k/a Advanced TelCom Group, Inc. ("ATT"), and Shared Communications Services, Inc. ("SCS") (hereinafter "the Companies" or "the Debtors"), both wholly-owned subsidiaries of Advanced TelCom Group, Inc., received invoices from USAC that reflected certain adjustments made to ATT's and SCS' USAC accounts. USAC based these adjustments on the Company's 2003 FCC Form 499A annual filings, which were filed on or about April 1, 2003. Some of these adjustments are based upon the Companies' pre-bankruptcy revenues. Based upon the Order Confirming the First Amended Joint Plan of Reorganization (the "Plan"), USAC is limited to the distribution provided to Class 4 claimants in the Plan, and is permanently enjoined from pursuing its prepetition claims outside the Plan.

Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Plan.

DC01/SWANE/210593.3

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In accordance with Section 54.719(b) of the FCC's rules,² this letter is a timely-filed³ appeal, to the Board of Directors of USAC ("Board"), of the July 22, 2003 and August 22, 2003 invoices received by the Companies, and of any future invoices that purport to adjust the Companies' federal universal service fund ("FUSF") contribution obligations based on the prepetition revenues (*i.e.*, revenues from services rendered between January 1, 2002 and May 1, 2002) reported in their April 2003 FCC Form 499-As.

BACKGROUND

On May 2, 2002 (the "Petition Date"), Advanced TelCom Group, Inc. and its subsidiaries, ATI and SCS (collectively, "the Debtors") each filed voluntary petitions under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of California, Santa Rosa Division (the "Bankruptcy Court").

On April 1, 2003, ATI and SCS each filed two separate FCC Form 499As -- a total of four (4) filings -- one form containing revenue for the prepetition period for each Debtor, and one form containing revenue for the postpetition period for each Debtor. These filings are appended hereto as *Attachment A*. On July 22, 2003 and August 22, 2003, USAC billed each of the Debtors for amounts that included adjustments made as a result of the Debtors' April 2003 FCC Form 499A filings. Such adjustments impermissibly included revenues generated by the Debtors prior to the Petition Date.

On August 11, 2003, ATI and SCS remitted amounts due pursuant to the July 22, 2003 invoices for telecommunications services billed and rendered in the post-bankruptcy filing period (*e.g.* post-May 2, 2002). At that time, in an explanatory cover letter to USAC, the Companies explained that they were remitting the amounts due with respect to post-bankruptcy petition obligations only. *See Attachment B*. On September 15, 2003, ATI and SCS remitted

² 47 C.F.R. § 54.719(b).

³ In accordance with Sections 54.719 and 54.720 of the FCC's rules, a party "aggrieved by an action taken by the Administrator pertaining to a billing, collection or disbursement matter that falls outside the jurisdiction of the Committees of the Board" may request a review by the Board within 60 days of the issuance of the "Administrator's decision." 47 C.F.R. §§ 54.719(b), 54.720(c). Assuming that disputed invoices issued by the USAC billing and collections department constitutes an "Administrator's decision," the Companies have sixty (60) days from the date of the July 2, 2003 invoice to file this appeal with the Board. Sixty (60) days from July 22, 2003 is September 20, 2003. Because that day falls on a weekend "holiday," under the FCC's rules, the filing is due the next business day, which, in this case, is September 22, 2003. 47 C.F.R. § 1.4(e)(1).

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amounts owed due pursuant to the August 22, 2003 invoices for telecommunications services billed and rendered in the post-bankruptcy filing period.

**THE COMPANIES' OBLIGATION TO CONTRIBUTE TO THE FUSF AROSE WHEN IT PROVIDED
TELECOMMUNICATIONS SERVICES**

Section 254(d) of the Telecommunications Act ("Act") specifies that "every telecommunications carrier that *provides* interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."⁴ The FCC's universal service contribution rules require all entities "[c]onsidered telecommunications carriers *providing* interstate telecommunications services [to] contribute to the universal service support programs."⁵

Although the FCC's rules do not specify at what point the obligation to contribute to the FUSF arises, we believe that the language of both the Act and Section 54.706 of the FCC's rules is clear. Both the statute and the FCC's contribution rule state that entities that "provide" interstate telecommunications services must contribute to the FUSF. Thus, the obligation to contribute to the FUSF arises at the time that such entities "provide" such services to their customers.

As a result, the obligation for ATI and SCS to contribute to the FUSF arose *at the time that the Companies rendered telecommunications services to their customers, for which customers were subsequently billed*. Any revenue generated from services rendered during this time period constitutes prepetition revenue and is rendered a prepetition obligation. Therefore, any required FUSF contributions based on services provided by the Debtors prior to the Petition Date that had not been paid by the Petition Date, are prepetition obligations.

⁴ 47 U.S.C. § 254(d) (emphasis added).

⁵ 47 C.F.R. § 54.706(a) (emphasis added).

PRE-PETITION BANKRUPTCY DEBTS MUST BE DISCHARGED THROUGH BANKRUPTCY PROCEEDINGS

USAC cannot recover prepetition obligations from the Reorganized Debtors by submitting invoices for payment. Pursuant to the Plan, USAC had a general unsecured claim, which the Debtors classified as a Class 4 claim. Section 6.5 of the Plan provides that "[e]ach holder of an Allowed Unsecured will receive its Pro Rata share of the Unsecured Distribution Reserve and its Adjusted Pro Rata share of the proceeds of any Avoidance Action."⁶ The Confirmation Order, which was approved on May 13, 2003, provides:

Except as otherwise provided in the Plan or this Confirmation Order, on and after the Effective Date, all Persons who have held, currently hold or may hold a Claim or Interest . . . treated or provided for pursuant to the Plan are permanently enjoined from taking any of the following actions on account of such Claim or Interest: (i) commencing or continuing, in any manner and in any place, any action or proceeding against the estate, the Debtors, the Reorganized Debtors, the Liquidation Trustee, Professional Persons or the Committee without leave to the Bankruptcy Court, (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree or other order against the estate, the Debtors, the Reorganized Debtors, the Liquidation Trustee, or the Committee without leave of the Bankruptcy Court; (iii) creating, perfecting or enforcing any lien against property of the Estate without leave of the Bankruptcy Court; (iv) taking any action to obtain possession of property of the Estate or to obtain possession of property from the estate or to exercise control over the Estate or property of the Estate without leave of the Bankruptcy Court; and (v) commencing or continuing any action or proceeding, in any manner and in any place, that does not comply with or is inconsistent with the provisions of the Plan.

See Attachment C, para. 12.

Because the remainder of the balances invoiced to the Reorganized Debtors in the July 22 and August 22, 2003 invoices reflect prepetition obligations, and because the Plan provides for the USAC's recovery of such prepetition obligations, the USAC is enjoined from collecting, or attempting to collect, such revenue from the Reorganized Debtors.

⁶ The Debtors do not concede that the USAC has or ever had an Allowed Claim.

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Accordingly, the Companies request that USAC immediately discontinue collections of prepetition contribution amounts, and amend the statements of account for Filer 499 IDs 817168 and 802188 to remove all assessments based upon revenues reported by the Companies for services billed and rendered prior to May 2, 2002, the date of the Companies' bankruptcy petition. The Companies further request that USAC refrain from sending the Companies any future invoices based on the pre-petition revenues reported in their April 2003 FCC Form 499A filings (specifically, for the time period from 1/1/02-5/1/02, as clearly identified in the pre-petition version of the April 2003 A filing).

Enclosed please find a duplicate copy of this filing. Please date-stamp the duplicate and return to the courier.

Please do not hesitate to contact the undersigned if you have any questions regarding this matter. We appreciate your immediate attention to this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. Mutschelknaus', followed by a horizontal line extending to the right.

Brad E. Mutschelknaus
Erin R. Swansiger

Counsel to Advanced TelCom Group, Inc.

cc: Jillian Aylward, Associate General Counsel, USAC (hand-delivered)

CERTIFICATE OF SERVICE

I, Beatriz Viera-Zaloom, hereby certify that on this 16th day of September 2004, a true and correct copy of the foregoing **Appeal of Advanced TelCom Inc. f/k/a Advanced TelCom Group, Inc.**, was delivered via courier or regular mail upon the following:

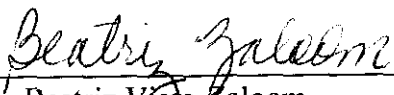
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Beatriz Viera-Zaloom

* By courier